



ENVIRONMENTAL PROTECTION AGENCY

[EPA-OW-2013-0610; FRL – 10017-57-OW]

Proposed Information Collection Request; Comment Request; Clean Water Act 404 State-Assumed Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), “Clean Water Act Section 404 State-Assumed Programs” (EPA ICR No. 0220.14, OMB Control No. 2040-0168) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through July 31, 2021. An Agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be received on or before [insert date 60 days after DATE OF publication in the *Federal Register*].

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OW-2013-0610, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method).
Follow the online instruction for submitting comments.
- Email: ow-docket@epa.gov. Include Docket ID No. EPA-HQ-OW-2013-0610 in the subject line of the message.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Water Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.
- Hand Delivery or Courier (by scheduled appointment only): EPA Docket Center, WJC

West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004.

The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday through Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking.

Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/> or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Dolores Wesson, Oceans, Communities, and Wetlands Division, Environmental Protection Agency, 1200 Pennsylvania Ave. N.W. (4504T), Washington, DC 20460; telephone number: 202-566-2755; email address: wesson.dolores@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave., NW, Washington, D.C. The telephone number for the Docket Center is 202-566-1744. The EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/> as there may be a

delay in processing mail and faxes. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act, EPA is soliciting comments and information to enable it to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another Federal Register notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Section 404(g) of the Federal Water Pollution Control Act (FWPCA), or the Clean Water Act (CWA) as it is commonly called,¹ authorizes States and Tribes to assume the section 404 permit program for discharges of dredged or fill material into certain waters of the United States. This ICR covers the collection of information EPA needs to perform its program approval

¹ The FWPCA is commonly referred to as the CWA following the 1977 amendments to the FWPCA. Public Law 95-217, 91 Stat. 1566 (1977). For ease of reference, EPA will generally refer to the FWPCA in this document as the CWA or the Act.

and oversight responsibilities and the State or Tribe needs to implement its program.

Request to assume CWA section 404 permit program. States and Tribes must demonstrate that they meet the statutory and regulatory requirements at 40 CFR part 233 for an approvable program. Specified information and documents must be submitted by the State or Tribe to EPA to request assumption and must be sufficient to enable EPA to undertake a thorough analysis of the State or tribal program. The information contained in the assumption request submission is provided to the other involved federal agencies (*e.g.*, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and National Marine Fisheries Service) and to the general public for review and comment.

Permit application information. States and Tribes with assumed programs must be able to issue permits that assure compliance with all applicable statutory and regulatory requirements, including the CWA section 404(b)(1) Guidelines. Sufficient information must be provided in the application so that States or Tribes and federal agencies reviewing the permit are able to evaluate, avoid, minimize, and compensate for any anticipated impacts resulting from the proposed project. EPA's assumption regulations at 40 CFR 233.30 establish required and recommended elements that should be included in the State or Tribe's permit application, so that sufficient information is available to make a thorough analysis of anticipated impacts. These minimum information requirements generally reflect the information that must be submitted when applying for a section 404 permit from the U.S. Army Corps of Engineers. (CWA section 404(h); CWA section 404(j); 40 CFR 230.10, 233.20, 233.21, 233.34, and 233.50; 33 CFR 325)).

Annual report and program information. EPA has an oversight role for assumed section 404 permitting programs to ensure that State or tribal programs are in compliance with applicable requirements and that State or tribal permit decisions adequately consider, avoid, minimize, and compensate for anticipated impacts. States and tribes must evaluate their programs annually and submit the results in a report to EPA. EPA's assumption regulations at 40 CFR 233.52 establish minimum requirements for the annual report.

The information included in the State or Tribe's assumption request and the information included in a permit application is made available for public review and comment. The information included in the annual report to EPA is made available to the public. EPA does not make any assurances of confidentiality for this information.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are those States requesting assumption of the CWA section 404 permit program; States with approved assumed programs; and permit applicants for assumed State programs. No Tribes are expected to assume at this time.

Respondent's obligation to respond: Required to obtain or retain a benefit (40 CFR 233).

Estimated number of respondents: Two States to request program assumption; 9,022 permit applicants (2,255.5 applications per State); and four States with assumed programs (the two current programs and potentially two that may be approved under this ICR) which will submit an annual report.

Frequency of response: States will respond one time to request assumption; if the program is approved, they will respond annually for the annual report; permit applicants will respond one time when requesting a permit.

Total estimated burden: The public reporting and recordkeeping burden for this collection of information is estimated to be 165,755.4 hours per year (1,012 hours to request program assumption times two States (2,024 hours) over a three-year period (675 hours); 2,255.5 permit applications reviewed by four States times 12.7 hours per application (114,579.40 hours); 4,511 permit applications in the two State-assumed programs times 11 hours per permit application (49,621); and 110 hours to prepare an annual report times four State assumed programs (440 hours)). The burden to EPA for related activities is 8,455 hours per year (442 hours to review assumption requests times two States (884 hours) over a three-year period (295); 100 permit applications times 80 hours per application review (8,000 hours); and 40 hours to review an

annual report times four State assumed programs (160 hours). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: Costs to States for assumed section 404 permit programs will vary widely by State and permit; however, the total estimated costs for four programs is \$5,641,625.21 and costs to permittees in State-assumed programs is \$1,266,824.13. There are \$0 capital or operation and maintenance costs. The cost to EPA for related activities is \$502,251.20 in labor costs (per year), includes \$0 annualized capital or operation and maintenance costs.

Changes in Estimates: There is an increase of 45,250.4 hours in the total estimated respondent burden compared with the ICR currently approved by OMB (128,960 hours in the current ICR). There are several reasons for this increase: 1) a small increase in the estimate of hours required to assume a program based on information provided by Michigan and New Jersey, the two States that are currently approved by EPA to administer a State dredged and fill program; 2) recent changes to policy in 2020 addressing endangered species and historic preservation requiring additional burden for States and federal agencies; 3) this estimate for the first time includes and reports burden to State-assumed programs of permit review and burden to permittees (prior ICRs did not calculate this burden due to lack of data); and 4) adjustments reflecting a small increase in the estimate of hours reported for review of permits by Michigan and New Jersey, as well as a small increase in the time reported to complete the annual report by Michigan. The estimate for number of permits per state has been reduced based on data provided by New Jersey and Michigan (down to 2,255.5 per state from the prior estimate of 2,975).

John Goodin,

Director, Office of Wetlands, Oceans and Watersheds, Office of Water.